

REMARKS

I. Status Summary

Claims 1-7, 9-15, 17-23, 26-28, 30-33, 35, and 36 are pending and have been examined by the United States Patent and Trademark Office (hereinafter the "Patent Office") in a Non-Final Official Action dated February 22, 2008.

The Abstract has been objected to upon the contention that it includes improper language and/or format.

The Oath/Declaration has been subjected to an objection regarding the priority claim.

Claims 1-4, 12, 15, 17-22, 26, 27, 35, and 36 have been rejected under 35 U.S.C. § 102(b) upon the contention that the claims are anticipated by Lieber *et al.* (73 J Virol 9314-9324 (hereinafter "Lieber"). Claims 1-3, 5-7, 9-13, 15, 17-22, 26, 27, 35, and 36 have also been rejected under 35 U.S.C. § 102(e) upon the contention that the claims are anticipated by U.S. Patent No. 6,383,794 to Mountz et al. (hereinafter "the '794 Patent") as evidenced by Samulski *et al.* (1989) 63 J Virol 3822-3828 (hereinafter "Samulski").

Claims 1, 26-28, and 30-33 have been rejected under 35 U.S.C. § 103(a) upon the contention that the claims are unpatentable over Lieber in view of U.S. Patent No. 5,962,313 to Podsakoff et al. (hereinafter "the '313 Patent"). Claims 1 and 21-23 have also been rejected under 35 U.S.C. § 103(a) upon the contention that the claims are unpatentable over Lieber in view of U.S. Patent Application Publication No. 2003/0017139 of Souza et al. (hereinafter "Souza").

The Abstract has been replaced with a rewritten Abstract. Support for the rewritten Abstract can be found in the Abstract as originally filed. Thus, no new matter has been added as a result of the replacement of the Abstract.

Claims 4, 10, and 11 have been canceled without prejudice. Applicants respectfully reserve the right to file one or more divisional and/or continuing applications with claims directed to the subject matter of the canceled claims.

Claims 1 and 15 have been amended. With respect to the amendments to claim 1, this claim has been amended to recite the elements originally presented in claims 4 and 11. Thus, support for the amendment can be found in claims 4 and 11 as originally

filed. Additional support can be found at page 21, lines 25-28 and at page 22, lines 8-9. Support for the amendment to claim 15 can be found at page 6, lines 19-21 and at page 23, lines 23-24. Thus, no new matter has been added by the amendments to the claims.

Reconsideration of the application as amended and based on the remarks presented hereinbelow is respectfully requested.

II. Response to the Objection to the Abstract

The Abstract has been objected to upon the contention that the language and the format employed are improper. Applicants have provided a replacement Abstract that is of the proper length and that does not include legal phraseology. Applicants respectfully submit that the replacement Abstract addresses the instant objection, and respectfully request that it be withdrawn at this time.

III. Response to the Objection to the Oath/Declaration

The Oath/Declaration has been subjected to an objection regarding the priority claim. Applicants respectfully submit that the listing of U.S. Provisional Application Serial No. 60/376,397 on the Oath/Declaration was in error. However, applicants respectfully submit that the instant application includes a section on page 1 of the specification entitled "Cross Reference to Related Applications" which correctly claims priority to this application. Applicants further respectfully submit that the PCT Application of which the instant application is a national stage application also included this section on page 1 of the disclosure.

Applicants respectfully submit that the presence of the Cross Reference paragraph in PCT Application and in the instant specification complies with the requirements of M.P.E.P. § 201.11, and thus the listing of the provisional application in the Oath/Declaration is merely superfluous. As a result, applicants respectfully submit that the priority claim to U.S. Provisional Application Serial No. 60/376,397 as set forth in the Cross Reference paragraph is believed to be effective to perfect applicants' claim to priority under 35 U.S.C. § 119(e). Thus, applicants respectfully request that the instant objection be withdrawn at this time.

IV. Responses to the Rejections under 35 U.S.C. § 102

Claims 1-4, 12, 15, 17-22, 26, 27, 35, and 36 have been rejected under 35 U.S.C. § 102(b) upon the contention that the claims are anticipated by Lieber. Claims 1-3, 5-7, 9-13, 15, 17-22, 26, 27, 35, and 36 have also been rejected under 35 U.S.C. § 102(e) upon the contention that the claims are anticipated by the '794 Patent as evidenced by Samulski.

Applicants respectfully note that the rejection over Lieber was not applied to claim 11, and the rejection over the '794 Patent as evidenced by Samulski was not applied to claim 4. Applicants have amended claim 1 to include the elements of both claims 4 and 11. Support for the amendments to claim 1 can be found throughout the specification as filed, including particularly in claims 4 and 11 as originally filed. Additional support can be found at page 21, lines 25-28 and at page 22, lines 8-9. Thus, no new matter has been added by the amendments to the claims.

As a result of the amendments to claim 1, applicants respectfully submit that claim 1 has been distinguished over Lieber and also over the '794 Patent as evidenced by Samulski. Claims 4, 10, and 11 have been canceled, and thus the instant rejections are believed to be moot as to these claims. Claims 2, 3, 5-7, 9, 12, 13, 15, 17-22, 26, 27, 35, and 36 all depend directly or indirectly from claim 1, and thus are also believed to be distinguished over Lieber and over the '794 Patent as evidenced by Samulski. Accordingly, applicants respectfully request that the instant rejections be withdrawn at this time.

V. Responses to the Rejections under 35 U.S.C. § 103

Claims 1, 26-28, and 30-33 have been rejected under 35 U.S.C. § 103(a) upon the contention that the claims are unpatentable over Lieber in view of the '313 Patent. Claims 1 and 21-23 have also been rejected under 35 U.S.C. § 103(a) upon the contention that the claims are unpatentable over Lieber in view of Souza.

Applicants have amended claim 1 as described in more detail hereinabove to include elements originally recited in claims 4 and 11. Applicants respectfully submit that as discussed hereinabove, Lieber does not disclose the subject matter of claim 1.

Additionally, applicants respectfully submit that Lieber does not suggest the

subject matter of claim 1, which the Patent Office appears to acknowledge as the instant rejection was not applied to either of claims 4 and 11. Applicants further respectfully submit that neither the '313 Patent nor Souza cures these deficiencies.

Therefore, since the combinations cited by the Patent Office neither disclose nor suggest the subject matter of claim 1, applicants respectfully submit that claim 1 is believed to be patentable over Lieber in view of the '313 Patent and over Lieber in view of Souza. Claims 21-23, 26-28, and 30-33 all depend directly or indirectly from claim 1, and thus are also believed to be distinguished over the cited combinations of references. Accordingly, applicants respectfully request that the instant rejections of claims 1, 21-23, 26-28, and 30-33 be withdrawn at this time.

### CONCLUSIONS

Based on the amendments and remarks presented herein, applicants respectfully submit that claims 1-3, 5-7, 9, 12-15, 17-23, 26-28, 30-33, 35, and 36 are in condition for allowance, and respectfully solicit a Notice of Allowance to that effect.

Should there be any minor issues outstanding in this matter, the Examiner is respectfully requested to telephone the undersigned attorney. Early passage of the subject application to issue is earnestly solicited.

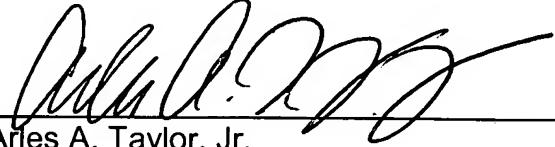
### DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account Number 50-0426.

Respectfully submitted,

JENKINS, WILSON, TAYLOR & HUNT, P.A.

Date: August 22, 2008

By:   
Arles A. Taylor, Jr.  
Registration No. 39,395  
Customer No. 25297  
(919) 493-8000